2394

SUPREME COURT OF THE UNITED STATES.

No. 131.

SPRINGFIELD TOWNSHIP OF FRANKLIN COUNTY, PLAINTIFF IN ERROR,

vs.

JOHN H. QUICK, AUDITOR, AND WILLIAM ROBESON, TREASURER OF FRANKLIN COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

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GIDEON, Print.

Pleas before the Honorable William Z. Stuart, Samuel B. Gookins, Samuel E. Perkins, and Andrew Davidson, judges of the supreme court of the State of Indiana, held at the state-house, in the city of Indianapolis, on the 11th day of June, in the year of our Lord one thousand eight hundred and fifty-five, it being the 15th day of said term.

JOHN H. QUICK, Auditor,
WILLIAM ROBESON, Treasurer,
vs.
SPRINGFIELD TOWNSHIP, Franklin County.

May Term, 1856.

Be it remembered, that heretofore, to wit, on the twenty-fourth day of November, A. D. 1855, came these appellants, by George Holland and J. D. Howland, their attorneys, and filed in the office of the clerk of the supreme court of said State a transcript of the record and proceedings in the above entitled cause, which reads in the words and figures following, to wit:

Pleas held at the court-house in the town of Brookville, in the county of Franklin, in the State of Indiana, on the 15th day of August, in the year of our Lord one thousand eight hundred and fifty-five, before the Honorable Reuben D. Logan, sole judge of the fourth judicial circuit of the State of Indiana, being the August term of the court aforesaid, for the county of Franklin aforesaid, in the year aforesaid.

SPRINGFIELD TOWNSHIP, of Franklin County,
vs.
JOHN H. QUICK, Auditor, and WILLIAM ROBESON, Treasurer of Franklin County.
} Civil Action.

Be it remembered, that heretofore, to wit, on the 21st day of May, A. D. 1855, in the office of the clerk of the Franklin circuit court aforesaid, was filed by said plaintiff against said defendant the following complaint, which is in the words and figures following, to wit:

In the Circuit Court of Franklin county, August term, 1855.

SPRINGFIELD TOWNSHIP, of Franklin County,
vs.
JOHN H. QUICK, Auditor, and WILLIAM ROBESON, Treasurer of Franklin County.
} Civil Action.

The said plaintiff complains of said defendants, and says that, by the act of Congress of the United States, of 26th of March, 1804, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," and also by the act of the same body of the 19th April, 1816, entitled "An act to enable the people of the Indiana Territory to form a constitution and State government, and for the admission of such State into the Union on equal footing with the other States," and by the ordinance of the convention which formed the first constitution of the State, as well as by sundry acts of the general assembly of Indiana, Congressional township number 9, of range No. 1, situate in said Franklin county, became a body politic and corporate, and was seized of section No. 16 in said Congressional township, which, by the act of Congress of 19th of April, 1816, was granted to the inhabitants of said township for the use of schools; that under the acts and by virtue of the authority of the general assembly of this State, the said section number 16 as aforesaid was, on the 28th day of January, 1836, sold at public auction by Samuel Lernig, the then school commissioner of said county, for the gross sum of $7,423 36, which said sum has, from the time of said sale, been in the care and custody of various county and township officers, at interest, for the use and benefit of the inhabitants of said Congressional township; and said interest has been annually collected, disbursed, and distributed for the support of common schools therein. And the said plaintiffs allege that the annual sum collected for distribution for school purposes in said township, if the interest accrued on the said fund up to the 3d Monday of May, 1855, amounts to the sum of $435 17, which last named sum is in the hands and custody and under the control and management of the defendants to this complaint.

And the plaintiff complains that said Congressional township remained under the laws of this State, a body corporate and politic, until the passage of the school law of June 14, 1852, by the general assembly of Indiana, entitled "An act to provide for a general and uniform system of common schools and school libraries, and matters properly connected therewith," when the corporate powers of said Congressional township were repealed, and the said plaintiff, by virtue of the general laws of the State, was erected into a body corporate and politic; and the plaintiff avers that the geographical limits of said Springfield township, in Franklin county, are identically the same with those of said Congressional township number 9, range No. 1, &c., and that the inhabitants of said Springfield township the (plaintiff herein) are the owners of said Congressional township fund, and are, for the present year ending on the 3d Monday of May, 1855, entitled to distribution amongst them of said sum of $435 17, for common school purposes in the said township.

And the said plaintiff further shows that, as nearly as can be ascertained, and taking the report of the superintendent of public instruction of this State, of January 19th, 1855, as the basis of the estimate, there are in said Springfield township 608 children legally entitled to distribution of the school fund, and that thus the per capita distribution of said sum of $435 $\frac{17}{100}$ among said children in said township, for the current year as aforesaid, amounts to a fraction over (71) seventy-one cents out of said Congressional township fund.

And said plaintiff further shows, that by an act of the general assembly of the State of Indiana, approved March 5th, 1855, entitled "An act to provide for a general system of common schools, the officers thereof and their respective duties, and matters properly connected therewith, and to establish township libraries, and for the regulation thereof," it is provided, in the 97th section thereof, as follows, to wit: "The State superintendent shall annually, by the fourth Monday in April in each year, make out a statement, showing the number of scholars in each county of the State, the amount of the income of the common school fund in each county for distribution, and the amount of taxes collected for school purposes, and shall apportion the same to the several counties of the State, according to the enumeration of scholars therein, without taking into consideration the Congressional township fund in such distribution. And also in the 101st section thereof as follows, to wit: "The treasurer of the several counties shall annually, on the third Monday of May, make distribution of the income of the common school fund to which his county is entitled (upon the warrant of the county auditor) to the several townships and incorporate cities and towns of the county, which payment shall be made to the treasurer of each township; and in making said distribution, the auditor shall ascertain the amount of the Congressional township fund belonging to each city, town, and township, and shall so apportion the income of the common school fund as to equalize the amount of available funds in each city, town, and township, as near as may be, according to the number of scholars therein: Provided, however, That in no case shall the income of the Congressional township be diminished by such distribution and diverted to any other township.

And the plaintiff further shows, that the common school fund as fixed and defined by law, consists of the Congressional township fund and the lands belonging thereto; the surplus revenue fund; the saline fund, and the lands belonging thereto; the bank tax fund and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana; the fund derived from the sale of the county seminaries, and the fines assessed for breaches of the penal laws of the State, and from all forfeitures which may accrue; all lands and other estate which shall escheat

to the estate for want of heirs or kindred entitled to the inheritance; all lands that may be granted to the State, where no special purpose is expressed in the grant, and the proceeds of the sale thereof, including the proceeds of the sale of the swamp lands; and taxes that may be assessed on the property of corporations for common school purposes, and that said common school fund does not embrace in any way the general school tax levied by the laws of this State, and that such tax is therefore not a part of the common school fund of the State.

And the plaintiff avers that the said attempted legislation of the general assembly of Indiana, and particularly the sections of said act of March 5th, 1855, and the proposed plan of distributing the general tax levied for common school purposes, are, as plaintiff is advised, in contravention of the act of Congress under which the plaintiff holds said common school fund, derived as aforesaid from the sale of said section 16, of town. 9, range 1, &c., and also that the same are in contravention of the constitution of the State of Indiana, and are therefore void in law.

And the plaintiff avers that, from the report made by said superintendent of common schools of the date of May 9th, 1855, in conformity with the 97th section of said act of March 5th, 1855, as above cited, the gross sum apportioned by said superintendent out of the taxes assessed, levied and collected in this State for common school purposes for the year 1854, and out of said common school fund (excepting the said Congressional township fund,) and designated by said officer for distribution in the county of Franklin, is $5,243 76; and from the same report, the number of children in said county entitled to share in such distribution is 7,283; making a per capita sum for distribution in said county, of seventy-two cents (72,) and said plaintiff insists that said Springfield township is entitled under the acts of Congress and the laws of the State of Indiana to a full per capita distribution of said general tax and common school fund, without any increase or diminution thereof, and without any apportionment thereof amongst the several Congressional townships of said Franklin county, so as to effect such proposed and illegal equalization of the Congressional township fund, and that the sum to which the said plaintiff is so entitled, at the rate of 72 cents for 608 children, amounts for the current year to the gross sum of $437 76, and with the Congressional township fund to which the plaintiff is entitled, $435 17, makes the aggregate of $872 93, to be distributed in said Springfield township.

And the plaintiff avers, that in the said apportionment so as aforesaid made by said superintendent of 72 cents per capita amongst the children in the State entitled by law to the benefit of the funds raised for purposes of education, the sum raised by taxation in the year 1854, as well as the proceeds of the common school

fund, except the Congressional township fund for the current year, are confused, and the plaintiff does not know and has not within reach the means of learning, and so cannot state what proportion of the said apportionment results from the general common school tax, and what proportion from the common school fund, (except the Congressional township fund,) but the plaintiff believes that much the greater portion of said sum so apportioned as aforesaid by said superintendent results from the taxes levied and collected throughout the State for common school purposes for the year 1854.

And the plaintiff further says, that the said defendants, the auditor and treasurer of said county, pretending to be governed by the said act of the 5th of March, 1855, and particularly by said 101st section above set forth in this complaint, are about to equalize in the distribution of the sum so apportioned to Franklin county, by the said superintendent, such inequalities as exist between the several Congressional townships and parts of Congressional townships in said county, in their respective Congressional township funds, by means of an unequal distribution of the sum so apportioned to the said county; avoiding, however, any reduction of the Congressional township fund.

And the plaintiff states and shows, as nearly and accurately as the facts can be ascertained, the unequal and oppressive effect of the distribution so proposed to be made by said defendants, to wit, that the gross amount of the proceeds of the Congressional township fund now on hand for distribution on the third Monday of May, in said county, according to a schedule of the several Congressional townships and parts of Congressional townships in said county, and the respective portions of the proceeds of the Congressional township fund belonging to each, filed herewith and marked "A," by way of reference, is the sum of $2,729 $\frac{55}{100}$; and that from the report aforesaid of said superintendent of public instruction of 9th May, 1855, making said apportionment, the number of children entitled to distribution (of said tax and common school fund) in said county, is 7,283; and that, making an aggregate for the purpose of distribution and equalization of the said sum so apportioned, and the whole Congressional township fund of the county, gives a total of $7,973 31, on which the sum to be distributed is per capita, for every child in the county entitled to share in the distribution, a fraction over 1.09, and that under such proposed distribution this sum of 1.09 for each child so entitled in said Springfield township would be all that the plaintiff could receive, when in fact, by virtue of a fair distribution of the Congressional township fund, and of the general common school tax and other common school fund, the sum per capita to the said township would be $1 43; and that thus, by such illegal distribution as is so proposed, the plaintiff would lose, out of such tax and common

school fund, the gross sum of about $210, to which the plaintiff is legally entitled; and the plaintiff avers, that by reason of the near approach of the period of distribution by said defendants, and also for the reason that when said distribution shall be made, an irreparable wrong will be inflicted on the plaintiff; that the present proceeding is a case of emergency in which notice cannot safely be given to said defendants as in ordinary cases, and the plaintiff prays your honor for an injunction in this case to be granted forthwith, on the plaintiff complying with such terms as the court may prescribe, directed to said defendants, strictly enjoining them from any such distribution of the money arising from the general common school tax, and from the common school fund or any part thereof, as will in anywise diminish to the plaintiff the full amount due the plaintiff on a fair and equal per capita division and distribution of the whole of said tax fund, and part of the common school fund aforesaid, without in anywise regarding said Congressional township fund, or making the said proposed illegal effort to equalize such Congressional township fund throughout the county. And will your honor adjudge the distribution to be made in conformity with this complaint and the prayer of the plaintiff, and grant all other suitable relief in this behalf?

HOLLAND & HOWLAND, *Att'ys.*

Alfred B. James, a resident of Springfield township, in Franklin county, being sworn, upon his oath says, that the foregoing complaint is true in substance, and as to matter of fact, as he verily believes.

ALFRED B. JAMES.

Subscribed and sworn to this 21st of May, 1855, before me.

JOHN M. JOHNSTON,
Clerk F. C. C.

And afterwards, to wit, on the day and year aforesaid, was filed in the office of the clerk of the court aforesaid the following order of injunction and undertaking by said plaintiff, which are in the words and figures following, viz:

SPRINGFIELD TOWNSHIP of Franklin County
vs.
JOHN H. QUICK, Auditor, and WILLIAM ROBESON, Treasurer of Franklin County.
} Order of Injunction.

Now at this day comes the said plaintiff by counsel, and on a complaint filed in the Franklin circuit court, as above entitled, verified by the affidavit of Alfred B. James, a resident of said county, moves before John M. Johnston, clerk of said court, for an injunction against the said defendants, restraining them from making

any such distribution of the annual tax collected for purposes of common school education, and the common school fund, as regards the alleged inequalities in the amount of the Congressional township fund between the several Congressional townships and parts of Congressional townships in the county of Franklin, and proposes to remedy and equalize the same by unequally distributing said tax and common school fund; and the said complaint being inspected, and the case of the plaintiff appearing to be one of emergency in which notice cannot be given without danger to the plaintiff's rights, it is ordered that on said plaintiff filing an undertaking, according to law, with Alfred B. James, surety, the said defendants be, and they are hereby strictly enjoined and forbidden from distributing the annual tax fund collected for common school purposes, and the common school fund, except the Congressional township fund, in any other way than by a pro rata distribution to each township treasurer, according to the enumeration of children therein. This injunction to stand until the 7th day of June, 1855, to enable the plaintiff to give the defendants notice.

[SEAL.] Witness my hand and seal of said court, this 21st day of May, 1855.

JOHN M. JOHNSTON,
Clerk of Franklin Circuit Court.

SPRINGFIELD TOWNSHIP of Franklin County
vs.
JOHN H. QUICK, Auditor, WILLIAM ROBESON, Treasurer of Franklin County.
} Franklin Circuit Court.

We undertake that the above named plaintiff shall pay to the above named defendants all damages and costs which may accrue by reason of the injunction in this action.

May 21st, A. D. 1855.

ALFRED B. JAMES. [SEAL.]

[SEAL.]

Approved by me this 21st day of May, A. D. 1855.

JOHN M. JOHNSTON,
Clerk of the Franklin Circuit Court.

And afterwards, to wit, on the 7th day of June, A. D. 1855, was filed in the office of the clerk of the court aforesaid the following injunction, viz:

In vacation of the Franklin Circuit Court.

THE STATE OF INDIANA,
Franklin County, ss.

SPRINGFIELD TOWNSHIP of Franklin County
vs.
JOHN H. QUICK, Auditor, WILLIAM ROBESON, Treasurer of Franklin County. } Order of Injunction.

And now at this day, to wit, (on the 7th day of June, A. D. 1855,) at the clerk's office of the Franklin circuit court, before John M. Johnston, clerk of said court, comes the said plaintiff by Holland and Howland, her attorneys, and the said defendants by Jones & Berry, their attorneys, come and enter their appearance to the said plaintiff's application for an injunction in the above entitled case; and thereupon, after examining all and singular the premises and hearing argument of counsel, it is therefore ordered by me, the said clerk, that the temporary injunction granted by me on the 21st day of May, A. D. 1855, in the above entitled case, be, and the same is hereby continued until the further order of the Franklin circuit court in the premises.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said Franklin circuit court, this 7th day of June, A. D. 1855.
[L. S.]

JOHN M. JOHNSTON, *Clerk.*

And afterwards, to wit, at the August term of the court aforesaid, before the judge aforesaid, on the 8th day of August, A. D. 1855, come the parties by their attorneys, and upon motion of the said plaintiff the said defendants are ruled to answer on or before the calling of the cause on to-morrow morning, &c.

And afterwards, to wit, at the term last aforesaid of the court aforesaid, for said county of Franklin, before the judge aforesaid, on the 10th day of August, A. D. 1855, come the parties by their attorneys, and thereupon the said defendants now file their demurrur to said plaintiff's complaint, and day is given, &c., which said demurrur is in the words and figures following, to wit:

SPRINGFIELD TOWNSHIP of Franklin County
vs.
JOHN H. QUICK, Auditor, and WILLIAM ROBESON, Treasurer of Franklin County. } Civ. Ac.

The defendants demur to the plaintiff's complaint herein for the following ground of objection: That said plaintiff's complaint does not state facts sufficient to constitute a cause of action.

JONES & BERRY, *Att's for Def'ts.*

And afterwards, to wit, at the term last aforesaid of court aforesaid, for the county aforesaid, before the judge aforesaid, on the 15th day of August, A. D. 1855: Now at this time comes the plaintiff, by George Holland and J. D. Howland, their attorneys, and the said defendants, by Jones and Berry, their attorneys, came also, and this cause is submitted to the court on the demurrer heretofore filed by said defendants to the plaintiffs' complaint; and argument being heard, and after deliberation had, it is considered by the court that said demurrer be overruled, and that the defendants answer over; and thereupon the defendants decline to answer further than they have already done by their said demurrer. It is therefore further considered by the court, that the injunction heretofore allowed by the clerk of this court, in vacation, be made perpetual, and that said defendants are restrained from making any distribution of the said tax, and of the proceeds of the common school fund aforesaid, which would diminish to said plaintiffs their full share thereof at the rate of 72 cents to each and every child in said township entitled to share in such distribution, and that the said defendants in making their distribution of said tax and the proceeds of said fund in said county do allow and distribute to the plaintiffs their full share thereof, as if there was not any Congressional township fund in existence; and it is further considered, that the plaintiffs recover of the defendants their costs in this behalf, and the said defendants pray an appeal to the Supreme Court, which is granted by agreement of parties without bond.

The schedule marked "A," and referred to in the plaintiffs' complaint, follows in the words and figures, to wit:

Congressional township fund.—Schedule of the proceeds for distribution in Franklin county for the year 1854–'5.

Town.	9,	range	1	435	17
"	8,	"	1	374	20
"	12,	"	12	788	51
"	12,	"	13	151	73
"	11,	"	13	94	04
"	9,	"	3	19	77
"	10,	"	3	14	39
"	10,	"	12	67	32
"	8,	"	2	59	94
"	11,	"	12	132	79
"	9,	"	2	104	30
"	10,	"	1	167	21
"	10,	"	2	206	71
"	12,	"	11	113	47
				$2,729	55

THE STATE OF INDIANA,
Franklin County, ss.

I, John M. Johnston, clerk of the circuit court for the county of Franklin and State of Indiana, do hereby certify the foregoing to be full, true, and complete copies of all the papers and entries of the above entitled cause remaining on file or record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Brookville, this 7th day of September, A. D. 1855.

[L. S.]

JOHN M. JOHNSTON, *Clerk.*

In the Supreme Court.

JOHN H. QUICK, Auditor, and WILLIAM ROBESON, Treasurer of Franklin County, Appellants,
vs.
SPRINGFIELD TOWNSHIP, in Franklin County, Appellee.

The appellants, by J. Morrison, their attorney, say, that in the transcript and proceedings and judgment aforesaid there is error in this, that the judgment should have been for the appellant, when it was given for the appellee. The court erred in setting aside the distribution of the common school fund in said county, and in requiring and fixing another ratio.

J. MORRISON,
Att'y for Appellant.

The court will please consider the brief in the case of Springfield Township as the brief in this.

J. MORRISON.

In nothing is there error.

GEO. HOLLAND,
J. D. HOWLAND.

And afterwards, to wit, at a court began and held on the 26th day of November, 1855, on the second day of said term, at which time come the parties by their attorneys, and by agreement submit the cause to the court, but the court not being sufficiently advised in the premises, take time to advise thereon.

And afterwards, to wit, at a court began and held on the 26th day of November, 1855, and continued from day to day, until the 26th day of May, 1856, at which time come the parties by their attorneys, but the court not being sufficiently advised in the premises, take time to advise thereon.

And afterwards, to wit, at a court began and held on the 26th day of May, 1856, and continued from day to day, until the 16th day of June, at which time come the parties by their attorneys, and

the court being now sufficiently advised of and concerning the premises, give the following opinion and judgment:

Springfied Township, in Franklin county, being also a Congressional township, upon a complaint against Quick, the auditor, and Robeson the treasurer of said county, obtained an injunction against said auditor and treasurer from distributing the common school fund in said county, as required by the act of March 5, 1855. From the order making said injunction perpetual they appeal to this court. The complaint shows that said township has a considerable fund derived from the 16th section therein, and the plaintiff complains that the annual income arising from that fund shall not be taken into account, as said act requires, in making distribution of the revenues of the State derived from other trust funds and from taxation. The ground upon which this claim is made is, that the act in question is unconstitutional, and also that it violates the act of Congress making the grant. The 5th art. of the constitution is as follows: Knowledge and learning generally diffused throughout a community being essential to a free government, it shall be the duty of the general assembly to encourage by all suitable means, moral, intellectual, scientific and agricultural improvement, and to provide by law for a general and uniform system of common schools, wherein tuition shall be without charge and equally open to all.

Section 2d. The common school fund shall consist of the Congressional township fund, and the lands belonging thereto; the surplus revenue fund; the saline fund, and the land belonging thereto; the bank tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana; the fund to be derived from the sale of county seminaries, and the moneys and property heretofore held for such seminaries; from the fines assessed for breaches of the penal laws of the State, and from all forfeitures which may accrue; the lands and other estates which shall escheat to the State for want of heirs or kindred entitled to the inheritance; all lands that have been, or may hereafter be granted to the State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof, including the proceeds of the sale of the swamp lands granted to the State of Indiana, by act of Congress of the 28 of September, 1850, after deducting the expense of selecting and draining the same; taxes on the property of corporations that may be assessed by the general assembly for common school purposes.

Section 3. The principal of the common school fund shall remain a perpetual fund, which may be increased, but shall never be diminished, and the income thereof shall be inviolably appropriated to the support of common schools, and to no other purpose whatever.

Section 4. The general assembly shall invest in some safe and profitable manner all such portions of the common school fund as

have not heretofore been intrusted to the several counties, and shall make provision by law for the distribution among the several counties of the interest thereof.

Section 5. If any county shall fail to demand its proportion of said interest for common school purposes, the same shall be reinvested for the benefit of such county.

Section 6. The several counties shall be held liable for the preservation of so much of said fund as may be intrusted to them, and for the payment of the annual interest thereon.

Section 7. All trust funds held by the State shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created.

Section 8. The general assembly shall provide for the election, by the voters of the State, of a State superintendent of public instruction, who shall hold his office for two years, and whose duties and compensation shall be prescribed by law.

The following are the two sections of the act referred to which prescribe the mode of distributing the funds:

Section 97. The State superintendent shall annually, by the fourth Monday in April in each year, make out a statement showing the number of scholars in each county of the State, the amount of the income of the common school fund in each county for distribution, and the amount of taxes collected for school purposes, and shall apportion the same to the several counties of the State according to the enumeration of scholars therein, without taking into consideration the Congressional township funds in such distribution. The treasurer of the several counties shall annually, on the third Monday of May, make distribution of the income of the common school fund to which his county is entitled, (upon the warrant of the county auditor,) to the several townships and incorporated cities and towns of the county, which payment shall be made to the treasurer of each township; and in making the said distribution the auditor shall ascertain the amount of the Congressional township fund belonging to each city, town, and township, and shall so apportion the income of the common school fund as to equalize the amount of available funds in each city, town, and township, as near as may be according to the number of scholars therein: Provided, however, that in no case shall the Congressional fund be diminished by such distribution and diverted to any other township.—Acts 1855.

We are at a loss to see upon what ground it can be insisted that the act in question violates any provision of the constitution. That that instrument makes the common school fund to consist in part of the Congressional fund and the lands belonging thereto, is too plain for argument. Language could not be more explicit. The only question that can arise at this point, is this part of the constitution valid? It has been several times decided by this court,

that the 16th section belongs to the inhabitants of the Congressional township in which it is situated. The State vs. Newton, 5 Black., 455; The State vs. Springfield Township, 6 Ind., 83. And in the case last referred to it was held, that the act of 1852, which sought to take that land from the township, and to consolidate it with the other funds of the State, was void. To these decisions we adhere. But the question yet remains, had the people of the State, while seeking by a constitution to devise a system which should carry the means of instruction equally to every child in the State, the power, by virtue of her sovereignty, so to discriminate between those already provided with a fund, and those who had no such provision as to place them upon an equality? In other words, had she any power to take notice or cognizance of the Congressional township fund in any matter whatever? We think she had such power, and that, by the 8th article of the constitution, she exercised it by declaring that the Congressional township fund should constitute a part of the common school fund, and that by the first section of that article she expressly and in terms enjoined it upon the general assembly to provide by law, that the system, with that fund included, should be made uniform, which injunction could not have been obeyed without making the discrimination herein provided for. The argument for the appellee is, that the act of 1855 does indirectly what that of 1852 attempted to do directly; that it in effect takes away from the Congressional township their 16th section fund, and this is complained of as injustice. The argument likens it to the case of discriminating between the wealthy and the poor, in bestowing the favors of the State for the purposes of education, by withholding from the wealthy and industrious, and conferring upon the poor and indolent. We do not perceive either the logic of this argument or its conflict with the constitution, if well put, so far as the act professes to go. There is certainly no material difference between taking away what one has, and the refusal to give him more. So far as the constitution affects the question, the power to discriminate exists, unless it is prohibited, and the prohibition is neither pointed out, nor have we been able to find it in the instrument. It does not conflict with the 23d section of the 4th article, which requires all laws to be of uniform operation throughout the State, for the act is not only uniform in itself, but produces uniformity in the subjects upon which it operates. The example which the appellee has chosen forcibly illustrates the position assumed. But to our minds the operation of the law seems much like that provision of the law of descents which distributes nothing to the heir, who has received an advancement until the others are made equal—a provision highly favored by the courts on account of its obvious justice. It is to be remembered that it was not the townships which had paid the price of the lands, but the State, by exempting the lands of the general govern-

ment from taxation for five years after their sale; still they are invested with the title, and the act does not propose to direct it, but it proposes to distribute to the other children of the State until the advancements are made equal. What has been said disposes of the other part. The act does not conflict with the other act of Congress, making the grant, nor in any manner attempt to interfere with it. It is therefore considered by the court, that the judgment of the court below be in all things reversed at the costs of the appellee, and that said court below be also ordered to dismiss the complaint.

All of which is ordered to be certified to said court.

It is further considered by the court that the appellant recover of the appellee the sum of dollars and cents for the costs and charges in this behalf expended.

(Stuart, J., dissents from above opinion.)

STATE OF INDIANA, *ss.*

I, William B. Beach, clerk of the supreme court of the State of Indiana, hereby certify that the foregoing is a full and true copy of the transcript of the record and all proceedings had in the above entitled cause.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Indianapolis, this third day of December, A. D. 1856.

[SEAL.]

WM. B. BEACH, *C. S. C.*
Per JOSEPH S. KENTZEL, *Dep.*

UNITED STATES OF AMERICA.

The President of the United States of America to the judges of the supreme court of the State of Indiana, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said court before you, between John H. Quick, auditor, and William Robeson, treasurer of Franklin county, appellants, and Springfield township of Franklin county, appellee, a manifest error hath happened, to the great damage of said Springfield township of Franklin county, as by the complaint of said township appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being therein inspected, the said Supreme Court may cause further t be done

therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of the [SEAL.] supreme court of the State of Indiana hereunto affixed, at Indianapolis, this 2d day of March, A. D. 1857.

WM. B. BEACH,
Clerk Sup. Court.

United States of America to John H. Quick, Auditor, and William Robeson, Treasurer of Franklin county, (in the State of Indiana,) greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Indiana, wherein Springfield township of Franklin county is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in said writ mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel E. Perkins, one of the justices of the said supreme court of the State of Indiana, this second day of March, A. D. 1857.

S. E. PERKINS,
A. Judge Sup. Court Ind.

The United States of America to John H. Quck, Auditor, and William Robeson, Treasurer of Franklin county, (in the State of Indiana,) greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Indiana, wherein Springfield township of Franklin county is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in said writ mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel E. Perkins, one of the justices of the said supreme court of the State of Indiana, this second day of March, A. D. 1857.

S. E. PERKINS,
A. Judge Sup. Court Ind.

We do hereby acknowledge service on us of the within and foregoing copy this tenth day of March, A. D. 1857.

JOHN H. QUICK,
Aud. Franklin County.
W. ROBESON,
Treasurer of F. C.

In the Supreme Court of the *United States.*

SPRINGFIELD TOWNSHIP, of Franklin County, Plaintiff in error,
vs.
JOHN H. QUICK, Auditor, and WILLIAM ROBESON, Treasurer, Defendants in error.
} Assignment of Errors.

In error to the Supreme Court of the State of Indiana.

Comes the said plaintiff in error and says, that there is manifest error in the record and proceedings in the above entitled cause, and sets forth and shows to the Supreme Court of the United States, as special grounds of error in this behalf, as follows, that is to say:

1st. That the provision of the constitution of the State of Indiana contained in section 2 of the 8th article of the said instrument, and which is as follows, to wit: "The common school fund shall consist of the Congressional township fund and the lands belonging thereto," is in contravention of the first subdivision of the 6th section of the act of Congress approved April 19, 1816, entitled "An act to enable the people of Indiana Territory to form a constitution and State government, and for the admission of such State into the Union on equal footing with the original States," and is therefore void.

2d. That the said 97th and 101st sections of the act of the general assembly of the State of Indiana, approved March 5th, 1855, entitled "An act to provide for a general system of common schools, the officers thereof, and their respective duties," &c., which sections are as follows:

97th. "The State superintendent shall annually, by the fourth Monday in April in each year, make out a statement showing the number of scholars in each county of the State, the amount of the income of the common school fund in each county for distribution, and the amount of taxes collected for school purposes, and shall apportion the same to the several counties of the State, according to the enumeration of scholars therein, without taking into consideration the Congressional township fund in such distribution."

101st. "The treasurer of the several counties shall annually, on the third Monday of May, make distribution of the income of the common school fund to which his county is entitled (upon the warrant of the county auditor) to the several townships, and incorporated cities and towns of the county, which payment shall be made to the treasurer of each township, and in making said distribution the auditor shall ascertain the amount of the Congressional township fund belonging to each city, town, and township, and shall so apportion the income of the common school fund as to equalize the amount of available funds in each city, town, and township, as near as may be, according to the number of scholars therein: Provided, however, that in no case shall the income of the Congressional township

be diminished by such distribution, and diverted to any other township,"—are likewise in contravention of the said provision of the act of Congress above cited, and therefore void.

3d. That by the law of the land the judgment of said supreme court ought to have been rendered in favor of the plaintiff in error.

For these and other errors in said record the plaintiff in error prays that the said judgment of the supreme court be reversed, and the cause remanded with instructions to said supreme court to affirm the opinion and judgment of the circuit court of Franklin county.

LUCIAN BARBOUR,
Att'y for Plaintiff in Error.

Come the defendants, by J. E. McDonald, attorney gen. for the State of Indiana, and for joinder in error say, that "in nothing is there error in the record;" and the said attorney waives all irregularity and informality in said writ of error.

J. E. McDONALD,
Att'y Gen.

Filed 15th Feb., 1858.

[Rec. cxxxi, D. T., 1858.]—3